UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

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| UNITED STATES OF AMERICA EX REL. BENIGNO MARRERO, No. 69792-158, -against- WARDEN, LEWISBURG PENITENTIARY, RESPONDENT. | PETITION FOR WRIT OF HABEAS CORPUS No. 1435 |

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA:

Relator, BENIGNO MARRERO, prays that a writ of habeas corpus directed to the Warden of Lewisburg Penitentiary issue, and alleges:

1. He is unlawfully detained by the Warden of Lewisburg Penitentiary in Lewisburg Penitentiary, County of Northumberland, State of Pennsylvania.

2. He is detained pursuant to a pretended order of commitment issued by the United States District Court for the Southern District of New York.

3. His indictment, No. 70 Cr. 161, for the offenses for which he has been confined was filed on March 9, 1970. He pleaded not guilty, but was found guilty by a jury, on April 10, 1970, of violating 21 U.S.C. §§ 173 and 174 and 26 U.S.C. §§ 4701, 4703, 4704(a), 4771(b) and 7237(a). He was sentenced on May 27, 1970, pursuant to those sections and received a sentence of confinement for ten years.

4. He appealed from the judgment of conviction. His conviction was affirmed by the United States Court of Appeals for the Second Circuit on October 26, 1971. An opinion, not yet reported, was rendered by that court. *United States v. Marrero,* No. 71-008.

5. He has petitioned the United States Supreme Court for a writ of certiorari to review the judgment of the Second Circuit. *Marrero v. United States,* No. 71-5725.

6. At his arraignment, plea, trial, and sentencing, petitioner was represented by an attorney, Joseph J. Stone, Esq., who address is 277 Broadway, Room 1108, New York, New York 10007.

7. On his appeal and petition for certiorari, petitioner was represented by an attorney, Harry C. Batchelder, Jr., whose address is 20 Broad Street, New York, New York 10005.

8. If 18 U.S.C. § 4202 applied to him, petitioner would be eligible for parole in or about September of 1973.

9. He is being held in custody unlawfully in that 26 U.S.C. § 7237(d), which was in effect at the time of his sentencing, provided that he would never be eligible for parole. That section was fully repealed by the Comprehensive Drug Abuse Prevention and Control Act of 1970, according to *United States v. Stephens*, No. 71-1884 (9th Cir., Sept. 29, 1971), and thus the provisions of 18 U.S.C. § 4202 are applicable to him. Because the question of eligibility for parole, even in the future, is a question of status, he is entitled to have that question determined on petition for a writ of habeas corpus.

10. No previous petition for habeas corpus, no motion for relief under 28 U.S.C. § 2255, and no other application, petition, or motion has been filed seeking this relief.

11. Relief under 28 U.S.C. § 2255 was not sought because that provision does not apply to requests for the type of relief sought here. Section 2255 requires that immediate release from confinement be sought. Such relief is not being requested here. Section 2255 also applies only to test sentence. The imposed sentence has not been called into question here.

12. He is without funds sufficient to pay the costs of this action, as shown by the attached affidavit. He therefore requests leave to proceed *in forma pauperis*.

/s/ Benigno Marrero
BENIGNO MARRERO

HARRY C. BATCHELDER, JR.
*Attorney for Relator*
20 Broad Street
New York, New York 10005
Tel.: (212) 422-6767

Address for service of papers:
RICHARD JORDAN, ESQ.
431-432 Connell Bldg.
Scranton, Pa. 18503

Of Counsel:
JOHN J. WITMEYER III

VERIFICATION

STATE OF PENNSYLVANIA
COUNTY OF NORTHUMBERLAND } ss.:

BENIGNO MARRERO, being first duly sworn under oath, presents that he has subscribed to the foregoing petition and does state that the information therein is true and correct to the best of his knowledge and belief.

/s/ Benigno Marrero
BENIGNO MARRERO

Subscribed and sworn to before me this 17 day of Jan., 1972.

/s/ S. A. LACATTUSI

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

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| UNITED STATES OF AMERICA ex rel. BENIGNO MARRERO, No. 69792-158, | Forma Pauperis Affidavit |
| -against- | |
| WARDEN, LEWISBURG PENITENTIARY, RESPONDENT. | Civil Action No. |

I, BENIGNO MARRERO, do hereby swear that I am a citizen of the United States of America; that because of my poverty I am unable to pay the costs of said suit or action; that I am unable to give security for the same; and that I believe I am entitled to the redress I seek in said suit or action.

/s/ Benigno Marrero
BENIGNO MARRERO

STATE OF PENNSYLVANIA
COUNTY OF NORTHUMBERLAND } ss.:

BENIGNO MARRERO, being first sworn under oath presents that he has subscribed to the above and does state that the information therein is true and correct to the best of his knowledge and belief.

/s/ Benigno Marrero
BENIGNO MARRERO

Subscribed and Sworn to before me this 17 day of Jan., 1972.

/s/ S. A. Lacattusi
*Notary Public*

My commission expires _____

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

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|---|---|
| UNITED STATES OF AMERICA EX REL. BENIGNO MARRERO, No. 69792-158, | Habeas Corpus No. 1435 |
| v. | |
| WARDEN, LEWISBURG PENITENTIARY, | |

## ORDER

Now, February 24, 1972, upon consideration of the petition for a writ of habeas corpus filed in this case, it is Ordered that Benigno Marrero be permitted to prosecute this action in forma pauperis without the prepayment of fees or costs.

It is further ordered that Rule is hereby granted upon the respondent, Noah Alldredge, to show cause why the petition should not be granted.

Rule returnable March 8, 1972.

/s/ William J. Nealon
*United States District Judge*

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

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| UNITED STATES OF AMERICA ex rel. BENIGNO MARRERO, RELATOR, -against- WARDEN, LEWISBURG PENITENTIARY, RESPONDENT. | Habeas Corpus No. 1435 |

## NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that the United States of America proceeding on relation of Benigno Marrero, Relator, hereby appeals to the United States Court of Appeals for the Third Circuit from the order denying relator's petition for habeas corpus entered in this action on July 26, 1972.

Dated: New York, New York,
July 28, 1972

/s/ Harry C. Batchelder, Jr.
HARRY C. BATCHELDER, JR.
*Attorney for Relator*
428½ Clinton Street
Brooklyn, New York 11231

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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No. 72-1842

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UNITED STATES OF AMERICA
ex rel BENIGNO MARRERO,
APPELLANT

v.

WARDEN, LEWISBURG PENITENTIARY,
APPELLEE

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## ORDER

Upon application of the appellee in the above-entitled matter, the motion to enlarge and extend the time within which appellee may file a petition for rehearing to October 1, 1973 is granted and the mandate will be stayed until final disposition of the petition for rehearing.

/s/ Max Rosenn
*Circuit Judge*

Dated: September 14, 1973

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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No. 72-1842

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UNITED STATES OF AMERICA
ex rel. BENIGNO MARRERO,
APPELLANT

v.

WARDEN, LEWISBURG PENITENTIARY

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PRESENT: GIBBONS and ROSENN, *Circuit Judges*
Order Sur Petition
for Recall and Stay of Mandate

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We filed our opinion and entered judgment in this matter on August 27, 1973. On September 14, 1973, we granted appellee's motion to stay the issuance of the mandate until October 1, 1973, so that it could determine in the meantime whether or not to apply to this court for rehearing. No such application was filed and on October 2, 1973, our certified judgment in lieu of formal mandate issued. We now have before us appellee's petition, belatedly filed October 16, 1973, to recall and stay the mandate pending the filing and disposition of a petition for certiorari to the Supreme Court of the United States. No extraordinary circumstances are assigned in the petition for failure to comply timely with Rule 41 of the Federal Rules of Appellate Procedure. Also see Rule 23(c) F.R.A.P.

It is therefore ORDERED that the appellee's petition for recall and stay of mandate be and is hereby denied.

By the court:

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*Circuit Judge*

Dated:
October 23, 1973

# Supreme Court of the United States

No. A-420

WARDEN, LEWISBURG PENITENTIARY,
PETITIONER,

v.

BENIGNO MARRERO

## ORDER

UPON CONSIDERATION of the application of counsel for the petitioner, and the opposition filed thereto,

IT IS ORDERED that the mandate of the United States Court of Appeals for the Third Circuit in Case No. 72-1842 be, and the same is hereby, stayed pending the timely filing of a petition for a writ of certiorari in the above-entitled cause. Should such a petition be so timely filed, this stay is to remain in effect pending this Court's action on the petition. If the petition for a writ of certiorari is denied, this stay is to terminate automatically. In the event the petition for a writ of certiorari is granted, this stay is to continue pending the sending down of the judgment of this Court.

/s/ WILLIAM J. BRENNAN, JR.
*Associate Justice of the Supreme Court of the United States*

Dated this 25th day of October, 1973.

# Supreme Court of the United States

No. 73-831

WARDEN, LEWISBURG PENITENTIARY,
PETITIONER,

v.

BENIGNO MARRERO

ORDER ALLOWING CERTIORARI. Filed January 7, 1974.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted.

The Solicitor General is invited to file a response to the motion of respondent for leave to proceed in forma pauperis on or before January 16, 1974.

☆ U.S. Government Printing Office: 1974—530-897/155